

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

KIMBERLY HANSON,)
vs.)
Plaintiff,) CIVIL ACTION
vs.) FILE No.
WALI AND Z ENTERPRISES INC.,)
Defendant.)

COMPLAINT

COMES NOW, KIMBERLY HANSON, by and through the undersigned counsel, and files this, her Complaint against Defendant, WALI AND Z ENTERPRISES INC., pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* (“ADA”) and the ADA’s Accessibility Guidelines, 28 C.F.R. Part 36 (“ADAAG”). In support thereof, Plaintiff respectfully shows this Court as follows:

JURISDICTION

1. This Court has original jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1334 for Plaintiff’s claims pursuant to 42 U.S.C. § 12181 *et seq.*, based upon Defendant’s WALI AND Z ENTERPRISES INC., failure to remove physical barriers to access and violations of Title III of the ADA.

PARTIES

2. Plaintiff KIMBERLY HANSON (hereinafter “Plaintiff”) is and has been at all times relevant to the instant matter, a natural person residing in Dallas, Texas (Dallas County).

3. Plaintiff is disabled as defined by the ADA.

4. Plaintiff is required to traverse in a wheelchair and is substantially limited in

performing one or more major life activities, including but not limited to: walking and standing

5. Plaintiff uses a wheelchair for mobility purposes.

6. Plaintiff is also an independent advocate of the rights of similarly situated disabled persons and is a “tester” for the purpose of enforcing Plaintiff’s civil rights, monitoring, determining and ensuring whether places of public accommodation are in compliance with the ADA. Her motivation to return to a location, in part, stems from a desire to utilize ADA litigation to make Plaintiff’s community more accessible for Plaintiff and others; and pledges to do whatever is necessary to create the requisite standing to confer jurisdiction upon this Court so an injunction can be issued correcting the numerous ADA violations on this property, including returning to the Property as soon as it is accessible (“Advocacy Purposes”).

7. Defendant, WALI AND Z ENTERPRISES INC. (hereinafter “WALI AND Z ENTERPRISES INC.”) is a Texas company that transacts business in the State of Texas and within this judicial district.

8. Defendant, WALI AND Z ENTERPRISES INC., may be properly served with process via its registered agent for service, to wit: c/o Platinum W. Manji, Registered Agent, 1402 Melody Lane, Carrollton, TX 75006.

FACTUAL ALLEGATIONS

9. On or about April 5, 2021, Plaintiff was a customer at “Marianos Pizza and Pasta,” a business located at 1003 Fox Avenue, Lewisville, TX 75067, referenced herein as “Marianos Pizza”. *See* photo of Plaintiff’s receipt attached as Exhibit 1. *See* photo of Plaintiff at the Property attached as Exhibit 2

10. Defendant, WALI AND Z ENTERPRISES INC., is the owner or co-owner of the real property and improvements that Lewisville Liquor is situated upon and that is the subject of

this action, referenced herein as the “Property.”

11. Defendant, WALI AND Z ENTERPRISES INC., as property owner, is responsible for complying with the ADA for both the exterior portions and interior portions of the Property. Even if there is a lease between Defendant, WALI AND Z ENTERPRISES INC., and a tenant allocating responsibilities for ADA compliance within the unit the tenant operates, that lease is only between the property owner and the tenant and does not abrogate the Defendant’s requirement to comply with the ADA for the entire Property it owns, including the interior portions of the Property which are public accommodations. *See* 28 CFR § 36.201(b).

12. Plaintiff’s access to the store located 1003 Fox Avenue, Lewisville, TX 75067, Denton County Property Appraiser’s property identification number 16536 (“the Property”), and/or full and equal enjoyment of the goods, services, foods, drinks, facilities, privileges, advantages and/or accommodations offered therein were denied and/or limited because of her disabilities, and she will be denied and/or limited in the future unless and until Defendant is compelled to remove the physical barriers to access and correct the ADA violations that exist at the Property, including those set forth in this Complaint.

13. Plaintiff lives 11 miles from the Property.

14. Plaintiff has visited the Property at least once before as a customer and advocate for the disabled. Plaintiff intends on revisiting the Property within six months after the barriers to access detailed in this Complaint are removed and the Property are accessible again. The purpose of the revisit is to be a return customer, to determine if and when the Property are made accessible and to maintain standing for this lawsuit for Advocacy Purposes.

15. Plaintiff intends on revisiting the Property to purchase goods and/or services as a return customer as well as for Advocacy Purposes, but does not intend to re-expose herself to the

ongoing barriers to access and engage in a futile gesture of visiting the public accommodation known to Plaintiff to have numerous and continuing barriers to access.

16. Plaintiff travelled to the Property as a customer and as an independent advocate for the disabled, encountered barriers to access at the Property, suffered legal harm and legal injury, and will continue to suffer such harm and injury as a result of the illegal barriers to access present at the Property.

COUNT I
VIOLATIONS OF THE ADA AND ADAAG

17. On July 26, 1990, Congress enacted the Americans with Disabilities Act 42 U.S.C. § 12101 *et seq.*

18. Congress found, among other things, that:

- (i) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (ii) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (iii) discrimination against individuals with disabilities persists in such critical areas as employment, housing public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (iv) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser service, programs, activities, benefits, jobs, or other opportunities; and
- (v) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an

equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

42 U.S.C. § 12101(a)(1) - (3), (5) and (9).

19. Congress explicitly stated that the purpose of the ADA was to:
 - (i) provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
 - (ii) provide a clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and
- * * * * *
- (iv) invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. § 12101(b)(1)(2) and (4).

20. The congressional legislation provided places of public accommodation one and a half years from the enactment of the ADA to implement its requirements.

21. The effective date of Title III of the ADA was January 26, 1992 (or January 26, 1993 if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181; 28 C.F.R. § 36.508(a).

22. The Property is a public accommodation and service establishment.

23. Pursuant to the mandates of 42 U.S.C. § 12134(a), on July 26, 1991, the Department of Justice and Office of Attorney General promulgated federal regulations to implement the requirements of the ADA. 28 C.F.R. Part 36.

24. Public accommodations were required to conform to these regulations by January 26, 1992 (or by January 26, 1993 if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181 *et seq.*; 28 C.F.R. § 36.508(a).

25. The Property must be, but is not, in compliance with the ADA and ADAAG.

26. Plaintiff has attempted to, and has to the extent possible, accessed the Property in her capacity as a customer at the Property and as an independent advocate for the disabled, but could not fully do so because of her disabilities resulting from the physical barriers to access, dangerous conditions and ADA violations that exist at the Property that preclude and/or limit her access to the Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

27. Plaintiff intends to visit the Property again as a customer and as an independent advocate for the disabled, in order to utilize all of the goods, services, facilities, privileges, advantages and/or accommodations commonly offered at the Property, but will be unable to fully do so because of her disability and the physical barriers to access, dangerous conditions and ADA violations that exist at the Property that preclude and/or limit her access to the Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

28. Defendant, WALI AND Z ENTERPRISES INC., has discriminated against Plaintiff (and others with disabilities) by denying her access to, and full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of the Property, as prohibited by, and by failing to remove architectural barriers as required by, 42 U.S.C. § 12182(b)(2)(A)(iv).

29. Defendant, WALI AND Z ENTERPRISES INC., will continue to discriminate against Plaintiff and others with disabilities unless and until Defendant, WALI AND Z

ENTERPRISES INC., is compelled to remove all physical barriers that exist at the Property, including those specifically set forth herein, and make the Property accessible to and usable by Plaintiff and other persons with disabilities.

30. A specific list of unlawful physical barriers, dangerous conditions and ADA violations which Plaintiff experienced, observed or subsequently made aware of that precluded and/or limited Plaintiff's access to the Property and the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the Property include, but are not limited to:

ACCESSIBLE ELEMENTS:

- (i) On the northeast corner of the Property is the only accessible parking space on the Property and it is missing a sign identifying it as accessible in violation of section 502.6 of the 2010 ADAAG Standards. This violation would make it difficult for Plaintiff to locate the accessible parking space.
- (ii) On the northeast corner of the Property, the accessible ramp side flares have a slope in excess of 1:10 in violation of Section 406.3 of the 2010 ADAAG standards. This violation would make it dangerous and difficult for Plaintiff to access the units of the Property.
- (iii) The access aisle to the accessible parking space in the northeast corner of the Property is not level due to the presence of an accessible ramp in the access aisle in violation of Section 502.4 of the 2010 ADAAG standards. This violation would make it dangerous and difficult for Plaintiff to exit and enter their vehicle while parked at the Property.

- (iv) The accessible curb ramp is improperly protruding into the access aisle of the accessible parking space in the northeast corner of the Property in violation of Section 406.5 of the 2010 ADAAG Standards. This violation would make it difficult and dangerous for Plaintiff to exit/enter their vehicle.
- (v) The total number of accessible parking spaces is inadequate and is in violation of Section 208.2 of the 2010 ADAAG standards. There are 54 total parking spaces on the Property requiring a minimum of three (3) accessible parking spaces, but there is only one accessible parking space. This violation would make it difficult for Plaintiff to locate an accessible parking space.
- (vi) There are no accessible parking spaces identified and marked as van accessible in violation of section, 208.2.4, 502.2 and 502.6 of the 2010 ADAAG Standards. This violation would make it difficult for Plaintiff to utilize a van to access the Property.
- (vii) Unit 160, Unit 173 and Unit 175 on the Property are not on an accessible route due to the lack of any accessible ramp providing an accessible route to the entrance of the Unit. The accessible entrance is on a raised sidewalk of approximately four inches and without an accessible ramp it is nearly impossible and certainly dangerous for an individual in a wheelchair to access this Unit.
- (viii) Due to the accessible barrier identified in (vii) above, the Property lacks at least one accessible route provided from site arrival points like the parking lot, public streets and sidewalks to Unit 160, Unit 173 and Unit 175 in violation of Section 206.2.1 of the 2010 ADAAG standards.

- (ix) Due to the accessible barrier identified in (vii) above, the Property lacks an accessible route connecting accessible facilities, accessible elements and/or accessible spaces of the Property in violation of Section 206.2.2 of the 2010 ADAAG standards. This violation would make it difficult for Plaintiff to access public features of the Property.
- (x) While there is a ramp that could potentially provide an accessible route to the Metro PCS store found in Unit 180, due to the fact the ramp is located directly in front of a parking space and a parking stop, when a vehicle parks in the parking space, it blocks the clear 32 inch accessible route to the ramp in violation of section 403.5.1 of the 2010 ADAAG standards. Moreover, even when a vehicle is not parked, the presence of the parking stop decreases the clear width to below 32 inches making this route inaccessible.
- (xi) Due to the accessible barrier identified in (x) above, the Property lacks at least one accessible route provided from site arrival points like the parking lot, public streets and sidewalks to Unit 180 in violation of Section 206.2.1 of the 2010 ADAAG standards.
- (xii) Due to the accessible barrier identified in (x) above, the Property lacks an accessible route connecting accessible facilities, accessible elements and/or accessible spaces of the Property in violation of Section 206.2.2 of the 2010 ADAAG standards. This violation would make it difficult for Plaintiff to access public features of the Property.
- (xiii)

(xiv) Defendant fails to adhere to a policy, practice and procedure to ensure that all facilities are readily accessible to and usable by disabled individuals.

31. The violations enumerated above may not be a complete list of the barriers, conditions or violations encountered by Plaintiff and/or which exist at the Property.

32. Plaintiff requires an inspection of the Property in order to determine all of the discriminatory conditions present at the Property in violation of the ADA.

33. The removal of the physical barriers, dangerous conditions and ADA violations alleged herein is readily achievable and can be accomplished and carried out without significant difficulty or expense. 42 U.S.C. § 12182(b)(2)(A)(iv); 42 U.S.C. § 12181(9); 28 C.F.R. § 36.304.

34. All of the violations alleged herein are readily achievable to modify to bring the Property into compliance with the ADA.

35. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Property is readily achievable because the nature and cost of the modifications are relatively low.

36. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Property is readily achievable because Defendant, WALI AND Z ENTERPRISES INC., has the financial resources to make the necessary modifications since the Property is valued at \$3,405,932.00 according to the Denton County Property Appraiser website.

37. The removal of the physical barriers and dangerous conditions present at the Property is also readily achievable because Defendant had available to it a \$5,000.00 tax credit and up to a \$15,000.00 tax deduction available from the IRS for spending money on accessibility modifications.

38. Upon information and good faith belief, the Property have been altered since 2010.

39. In instances where the 2010 ADAAG standards do not apply, the 1991 ADAAG standards apply, and all of the alleged violations set forth herein can be modified to comply with the 1991 ADAAG standards.

40. Plaintiff is without adequate remedy at law, is suffering irreparable harm, and reasonably anticipates that she will continue to suffer irreparable harm unless and until Defendant, WALI AND Z ENTERPRISES INC., is required to remove the physical barriers, dangerous conditions and ADA violations that exist at the Property, including those alleged herein.

41. Plaintiff's requested relief serves the public interest.

42. The benefit to Plaintiff and the public of the relief outweighs any resulting detriment to Defendant, WALI AND Z ENTERPRISES INC.

43. Plaintiff's counsel is entitled to recover its reasonable attorney's fees and costs of litigation from Defendant, WALI AND Z ENTERPRISES INC., pursuant to 42 U.S.C. §§ 12188 and 12205.

44. Pursuant to 42 U.S.C. § 12188(a), this Court is provided authority to grant injunctive relief to Plaintiff, including the issuance of an Order directing Defendant, WALI AND Z ENTERPRISES INC., to modify the Property to the extent required by the ADA.

WHEREFORE, Plaintiff prays as follows:

- (a) That the Court find Defendant, WALI AND Z ENTERPRISES INC., in violation of the ADA and ADAAG;
- (b) That the Court issue a permanent injunction enjoining Defendant, WALI AND Z

- ENTERPRISES INC., and from continuing their discriminatory practices;
- (c) That the Court issue an Order requiring Defendant, WALI AND Z ENTERPRISES INC., to (i) remove the physical barriers to access and (ii) alter the subject Property to make it readily accessible to and useable by individuals with disabilities to the extent required by the ADA;
- (d) That the Court award Plaintiff her reasonable attorneys' fees, litigation expenses and costs; and
- (e) That the Court grant such further relief as deemed just and equitable in light of the circumstances.

Dated: April 14, 2021.

Respectfully submitted,

Law Offices of
THE SCHAPIRO LAW GROUP, P.L.

/s/ Douglas S. Schapiro
Douglas S. Schapiro, Esq.
State Bar No. 54538FL
The Schapiro Law Group, P.L.
7301-A W. Palmetto Park Rd., #100A
Boca Raton, FL 33433
Tel: (561) 807-7388
Email: schapiro@schapirolawgroup.com

ATTORNEYS FOR PLAINTIFF
KIMBERLY HANSON